

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 28

AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-14-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 7. Reduced Ignition Propensity Standards for Cigarettes.

Sec. 0.5. Sections 1 through 28 of this chapter apply beginning July 1, 2009.

Sec. 1. As used in this chapter, "agent" means a person authorized by the department of state revenue to purchase and affix stamps (as defined by IC 6-7-1-9) on packages of cigarettes.

Sec. 2. As used in this chapter, "brand family" has the meaning set forth in IC 24-3-5.4-1.

Sec. 3. As used in this chapter, "cigarette" has the meaning set forth in IC 6-7-1-2.

Sec. 4. As used in this chapter, "manufacturer" means:

- (1) an entity that manufactures or produces cigarettes or causes cigarettes to be manufactured or produced that the manufacturer intends to be sold in Indiana, including cigarettes intended to be sold in the United States through an importer;
- (2) a first purchaser that intends to resell in the United States cigarettes that the original manufacturer or maker does not

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intend to be sold in the United States; or

(3) an entity that becomes a successor of an entity described in subdivision (1) or (2).

Sec. 5. As used in this chapter, "quality control and quality assurance program" means the laboratory procedures implemented to ensure that:

(1) operator bias, systematic and nonsystematic methodological errors, and equipment related problems do not affect the results of the testing; and

(2) the testing repeatability remains within the required repeatability values in section 13(f) of this chapter for all test trials used to certify cigarettes under this chapter.

Sec. 6. As used in this chapter, "repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time.

Sec. 7. As used in this chapter, "retail dealer" means a person, other than a manufacturer or wholesale dealer, that sells cigarettes.

Sec. 8. As used in this chapter, "sale" means any of the following:

(1) Transfer of title or possession, or both.

(2) Exchange or barter, including conditional exchanges or agreements.

(3) Giving cigarettes as samples, prizes, or gifts.

(4) Exchange of cigarettes for consideration other than money.

Sec. 9. As used in this chapter, "sell" means to:

(1) sell; or

(2) offer or agree to sell.

Sec. 10. As used in this chapter, "UPC bar code" means the universal product code or another product identification code that includes:

(1) a unique symbol that consists of a machine readable code; and

(2) numbers that are readable by an individual;

that meets the standards established by GS1 US.

Sec. 11. As used in this chapter, "wholesale dealer" means any of the following:

(1) A person, other than a manufacturer, that sells cigarettes to a retail dealer or other person for purposes of resale.

(2) A person who owns, operates, or maintains a cigarette

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vending machine in, at, or upon premises owned or occupied by another person.

Sec. 12. Except as provided in section 19 of this chapter, cigarettes may not be sold or offered for sale in Indiana unless the cigarettes:

- (1) have been tested according to the test method and meet the performance standard specified in section 13 or 15 of this chapter;
- (2) have been certified under section 21 of this chapter; and
- (3) have been marked under section 23 of this chapter.

Sec. 13. (a) Testing of cigarettes must be conducted according to the American Society of Testing and Materials (ASTM) standard E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes.

(b) Testing must be conducted on ten (10) layers of filter paper.

(c) Not more than twenty-five percent (25%) of the cigarettes tested in a test trial under this section may exhibit full length burns. Forty (40) replicate tests comprise a complete test trial for each cigarette tested.

(d) The performance standard required by this section may be applied only to a complete test trial.

(e) Written certifications must be based upon testing conducted by a laboratory that has been accredited under standard ISO/IEC 17025 of the International Organization for Standardization (ISO) or other comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing under this section must implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value may not be greater than nineteen hundredths (0.19).

(g) This section does not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

(h) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the required performance standard must be conducted according to this section.

Sec. 14. Each cigarette listed in a certification submitted under section 21 of this chapter that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard in section 13 or 15 of this chapter must have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one (1) complete band must be located at least

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fifteen (15) millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two (2) bands fully located at least fifteen (15) millimeters from the lighting end and ten (10) millimeters from the filter end of the tobacco column, or for nonfiltered cigarettes ten (10) millimeters from the labeled end of the tobacco column.

Sec. 15. (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested by the test method in section 13(a) of this chapter shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard in section 13(c) of this chapter, the manufacturer may use the test method and performance standard to certify the cigarette under section 21 of this chapter.

(b) If the state fire marshal determines that:

- (1) another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter; and
- (2) the officials in that state responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or rule under a legal provision comparable to this section;

the state fire marshal shall authorize that manufacturer to use the alternative test method and performance standard to certify that cigarette for sale in Indiana, unless the state fire marshal demonstrates a reasonable basis for why the alternative test should not be accepted under this chapter. All other applicable requirements of this chapter apply to the manufacturer.

Sec. 16. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years and make copies of these reports available to the state fire marshal and the attorney general upon written request. Any manufacturer that fails to make copies of these reports available within sixty (60) days after receiving a written request is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day after the sixty (60) days that the manufacturer does not make the copies available.

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Sec. 17. The commission may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full length burns exhibited by any tested cigarette when compared to the percentage of full length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in section 13(c) of this chapter.

Sec. 18. (a) Beginning July 1, 2011, every three (3) years the state fire marshal shall review the effectiveness of this chapter and issue a report that includes the state fire marshal's findings and, if appropriate, recommendations for legislation.

(b) The state fire marshal shall transmit a copy of the report required under subsection (a) in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.

Sec. 19. The requirements of section 12 of this chapter do not prohibit any of the following:

(1) A wholesale or retail dealer from selling the dealer's existing inventory of cigarettes on or after July 1, 2009, if the wholesale or retail dealer can establish that state tax stamps (as defined in IC 6-7-1-9) were affixed to the cigarettes before the effective date and if the wholesale or retailer dealer can establish that the inventory was purchased before the effective date in comparable quantity to the inventory purchased during the same period of the prior year.

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subdivision, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer) for the purpose of evaluating consumer acceptance of the cigarettes, using only the quantity of cigarettes that is reasonably necessary for the assessment.

Sec. 20. Subject to the requirements of this chapter, the state fire marshal shall implement this chapter in a manner to obtain uniformity with the implementation and substance of the New York Fire Safety Standards for Cigarettes (N.Y. Exec. Law Section 156-c).

Sec. 21. (a) Except as provided in subsection (d), each manufacturer shall submit to the state fire marshal a written certification attesting that:

(1) each cigarette listed in the certification has been tested as

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required under section 13 or 15 of this chapter; and

(2) each cigarette listed in the certification meets the performance standard in section 13(c) or 15 of this chapter.

(b) Each cigarette listed in the certification must include the following information:

- (1) Brand, or trade name on the package.
- (2) Style, such as light or ultra light.
- (3) Length in millimeters.
- (4) Circumference in millimeters.
- (5) Flavor, such as menthol, if applicable.
- (6) Filter or nonfilter.
- (7) Package description, such as soft pack or box.
- (8) Marking under section 23 of this chapter.
- (9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test.
- (10) The date that the testing occurred.

(c) The certifications must be made available to the attorney general for purposes consistent with this chapter and the department of state revenue and the alcohol and tobacco commission for the purposes of ensuring compliance with this section.

(d) Notwithstanding subsection (a), the state fire marshal may accept as evidence of compliance with this chapter a certification issued to:

- (1) the New York State Department of State's Office of Fire Prevention and Control; or
- (2) the responsible entity of another state that has:
 - (A) substantially equivalent certification requirements relating to reduced ignition propensity cigarettes; and
 - (B) the same test method and performance standard requirements as provided in sections 13 and 15 of this chapter.

(e) Each cigarette listed in a certification submitted under this section must be recertified every three (3) years.

(f) For each brand family listed in a certification submitted under subsection (a) or (d), a manufacturer shall pay a fee to the state fire marshal of eight hundred dollars (\$800). The state fire marshal may adjust the fee every three (3) years to ensure that the fee defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter under rules adopted by the fire prevention and building safety commission.

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However, the fee for each brand family may not exceed one thousand dollars (\$1,000).

(g) If a manufacturer has certified a cigarette under this section, and after submitting the certification, makes a change to the cigarette that is likely to alter the cigarette's compliance with the reduced cigarette ignition propensity standards required by this chapter, that cigarette may not be sold or offered for sale in Indiana until the manufacturer retests the cigarette under the testing standards in section 13 or 15 of this chapter and maintains records of that retesting as required by section 16 of this chapter. An altered cigarette that does not meet the performance standard in section 13 or 15 of this chapter may not be sold in Indiana.

Sec. 22. (a) The reduced ignition propensity standards for cigarettes fund is established. Money in the fund may be used to support processing, testing, enforcement, and oversight activities under this chapter. The fund shall be administered by the state fire marshal.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) The fund consists of:

- (1) certification fees collected under section 21 of this chapter; and
- (2) grants, gifts, and donations intended for deposit in the fund.

(e) The money in the fund at the end of the state fiscal year does not revert to the state general fund.

Sec. 23. (a) Packages of cigarettes that are certified by a manufacturer under section 21 of this chapter must be marked to indicate compliance with the requirements of section 12 of this chapter. The marking must be in eight (8) point type or larger and consist of:

- (1) modification of the product UPC bar code to include a visible mark printed at or around the area of the UPC bar code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the UPC bar code;
- (2) any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed upon the cigarette package or cellophane wrap; or

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(3) stamped, engraved, embossed, or printed text that indicates that the cigarettes meet the standards of this chapter.

(b) A manufacturer shall use only one (1) marking and shall apply this marking uniformly for all packages, including packs, cartons, and cases, and brands marketed by that manufacturer.

(c) The manufacturer shall notify the state fire marshal of the marking that is selected.

(d) Before certification of any cigarette, a manufacturer shall submit the manufacturer's proposed marking to the state fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve:

- (1) a marking in use and approved for sale in New York under the New York Fire Safety Standards for Cigarettes; or
- (2) the letters "FSC," which signifies Fire Standards Compliant, appearing in eight (8) point type or larger and permanently stamped, engraved, embossed, or printed on the package at or near the UPC bar code.

Proposed markings are considered approved if the state fire marshal fails to act within ten (10) business days after receiving a request for approval.

(e) A manufacturer may not modify its approved marking unless the modification has been approved by the state fire marshal under this section.

(f) A manufacturer certifying cigarettes under section 21 of this chapter shall:

- (1) provide a copy of the certifications to all wholesale dealers and agents to which the manufacturer sells cigarettes; and
- (2) provide sufficient copies of an illustration of the package marking used by the manufacturer under this section for each retail dealer to which the wholesale dealers or agents sell cigarettes.

Wholesale dealers and agents shall provide a copy of the package markings received from the manufacturers to all retail dealers to which the wholesale dealer or agent sells cigarettes. Wholesale dealers, agents, and retail dealers shall permit the state fire marshal, the department of state revenue, the alcohol and tobacco commission, and their employees to inspect markings on the cigarette packaging.

Sec. 24. (a) A manufacturer, a wholesale dealer, an agent, or another person or entity that knowingly sells or offers to sell

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cigarettes, other than through retail sale, in violation of section 12 of this chapter is subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of cigarettes sold or offered for sale. However, the penalty against a person or an entity may not exceed one hundred thousand dollars (\$100,000) during any thirty (30) day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of section 12 of this chapter is subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of cigarettes sold or offered for sale. However, the penalty against a retail dealer may not exceed twenty-five thousand dollars (\$25,000) during any thirty (30) day period.

(c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification under section 21 of this chapter is subject to a civil penalty of at least seventy-five thousand dollars (\$75,000). However, the penalty may not exceed two hundred fifty thousand dollars (\$250,000) for each false certification.

(d) A person that violates any other provision of this chapter is subject to a civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a subsequent offense not to exceed five thousand dollars (\$5,000), for each violation.

(e) A cigarette that has been sold or offered for sale that does not comply with the performance standard required by section 13 or 15 of this chapter is subject to forfeiture. Cigarettes forfeited under this section must be destroyed. However, before the destruction of any cigarette forfeited under this section, the holder of the trademark rights in the cigarette brand is allowed to inspect the cigarette.

(f) In addition to any other remedy provided by law, the state fire marshal may file an action in a court of competent jurisdiction for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this chapter or rules adopted under this chapter constitutes a separate civil violation for which the state fire marshal may obtain relief.

(g) A law enforcement officer or representative of the state fire marshal may seize and take possession of any cigarettes that have

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not been marked in the manner required by section 23 of this chapter. The seized cigarettes must be turned over to the department of state revenue. Cigarettes seized under this section are forfeited to the state and must be destroyed. However, before the destruction of any cigarette seized under this section, the holder of the trademark rights in the cigarette brand is allowed to inspect the cigarette.

Sec. 25. (a) The:

- (1) department of state revenue, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under IC 6-7; and
- (2) alcohol and tobacco commission;

may inspect cigarettes to determine if the cigarettes are marked as required by section 23 of this chapter.

(b) The department of state revenue and the alcohol and tobacco commission shall notify the state fire marshal upon the discovery of cigarettes that are not marked as required.

Sec. 26. To enforce this chapter, the attorney general and the state fire marshal, their authorized representatives, and law enforcement officers may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale is required to give the attorney general, the department of state revenue, the alcohol and tobacco commission, the state fire marshal, their authorized representatives, and law enforcement officers the means, facilities, and opportunity for the examinations authorized by this chapter.

Sec. 27. (a) The fire prevention and public safety fund is established. The fund shall be administered by the state fire marshal. Money in the fund may be used to support fire safety and prevention programs.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) The fund consists of:

- (1) penalties recovered under section 24 of this chapter; and
- (2) grants, gifts, and donations intended for deposit in the

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fund.

(e) The money in the fund at the end of the state fiscal year does not revert to the state general fund.

Sec. 28. Nothing in this chapter prohibits a person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 12 of this chapter if the cigarettes:

(1) are or will be stamped for sale in another state; or

(2) are packaged for sale outside the United States;

and the person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons in Indiana.

Sec. 29. The commission may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 30. A local governmental unit may not adopt an ordinance concerning any subject regulated by this chapter.

Sec. 31. This chapter may not be construed to supersede or preempt applicable federal laws or regulations concerning reduced ignition propensity standards for cigarettes.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) IC 22-14-7-21(d), as added by this act, applies to certifications issued not more than three (3) years before the date on which this act takes effect.

(b) This SECTION expires July 1, 2011.

SECTION 3. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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